Supreme Court, U. S.
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In the Supreme Court
OF THE
United States

TERM 1976

No. 75-1822

New Orleans Public Service Inc.,
A Louisiana Corporation
Petitioner

Versus

POWER DIVISION ASSOCIATION, an Unincorporated Employees Association, Charles V. Schindler, Willie Williams, Robert W. Gould, Obery Cooper, Jr., Myrna Chagnard, and all other persons similarly situated,

Respondents

PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Fifth Circuit

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In the Supreme Court

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TERM 1976

No.

NEW ORLEANS PUBLIC SERVICE INC.,
A Louisiana Corporation,

Petitioner

Versus

Power Division Association, an
Unincorporated Employees Association,
Charles V. Schindler, Willie Williams,
Robert W. Gould, Obery Cooper, Jr.,
Myrna Chagnard, and all other persons
similarly situated,

Respondents

PETITION FOR WRIT OF CERTIORARI

to the United States Court of Appeals for the Fifth Circuit

New Orleans Public Service Inc. ("NOPSI") petitions the Court herein for issuance of a Writ of Certiorari to review the order of the United States Court of Appeals for the Fifth Circuit entered on March 17, 1976, dismissing NOPSI's appeal from the order of class certification entered in these

proceedings by the United States District Court for the Eastern District of Louisiana.

I.
OPINIONS BELOW

The Order of the United States Court of Appeals for the Fifth Circuit to which this Petition for Writ of Certiorari is addressed is not officially reported; a copy of that Order is printed in the Appendix to this Petition, at page 1 thereof.

The Minute Entry and Opinion of the United States District Court for the Eastern District of Louisiana which was the subject of NOPSI's appeal to the Fifth Circuit is also not officially reported; a copy of that Minute Entry and Opinion is printed in the Appendix to this Petition, at pages 2-5 thereof.

II.
JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C.A. §1254 (1).

III.
STATEMENT OF THE CASE

This action is a Title VII and Civil Rights Action sought to be maintained by three black employees[1] and one female employee[2] (''Respondents'') within the Electric Power Department[3] of NOPSI who complain of alleged discrimination in the terms and conditions of their employment.[4]

Respondents seek to maintain this action for themselves and on behalf of *all* black and female employees in *all* departments[5] of NOPSI other than the Transit Department.[6]

1-Respondents Willie Williams, Robert W. Gould, and Obery Cooper, Jr.

2-Respondent Myrna Chagnard. As will appear from the Affidavit of Hero J. Edwards, Jr., Director of Personnel of NOPSI, which is printed in the Appendix to this Petition, at pages 6 to 7 thereof, Myrna Chagnard resigned from NOPSI's employ effective January 23, 1976 to accept other employment.

3-The exclusive bargaining representative of employees within the Electric Power Department of NOPSI,The Power Division Association, sought to act as a class representative herein, but was disqualified by the District Court below because of potential conflict and antagonism between its white and black, and male and female, membership. The President of The Power Division Association, Charles V. Schindler, was similarly disqualified because he is white and is thus not a member of the class sought to be represented.

4-A copy of the Complaint is printed in the Appendix to this Petition, at pages 8 to 12 thereof.

5-NOPSI operates 17 separate Departments, which are listed in the Affidavit of John L. Prendergast, Vice-President, Administration of NOPSI, which is printed in the Appendix to this Petition, at pages 13 to 16 thereof. The Affidavit of Michael J. Cade, Senior Vice President of NOPSI, is also printed in the Appendix, at pages 17 to 19 thereof, and shows that in 5 of those Departments NOPSI has entered into separate collective bargaining agreements with different unions unaffiliated with The Power Division Association, which govern wages, benefits and terms and conditions of employment.

6-The Transit Department was the subject of a previous separate proceeding in ''Henry Faggen, Etc. versus New Orleans Public Service Inc., et al.,'' Civil

But Respondents admit, of record, that they have no knowledge of anyone who might be a member of the alleged "class" which they seek to represent;[7] they have no knowledge of actual class discrimination;[8] they know of no documentary evidence reflecting any class discrimination (other than what might be contained in their own individual personnel files);[9] and they have no knowledge or information of facts which would support their claim for front pay and back pay. As to their claim for punitive damages, they admit that this is based upon a purely arbitrary figure.[10]

Based upon these admissions, NOPSI moved to dismiss the Complaint as a class action.

On December 15, the United States District Court for the Eastern District of Louisiana denied NOPSI's Motion to Dismiss, and at the same time entered an order certifying this action as a class action and the class to be represented herein as including:

> (a) All past, present and future black, non-supervisory employees since July 1, 1965, in all divisions of New Orleans Public Service Corporation (NOPSI) except the Transit Division; and
>
> (b) All past, present and future female, non-supervisory employees since July 1, 1965, in all divisions of NOPSI except the Transit Division

and certifying Respondents as proper representatives of that class.

On January 13, 1976, NOPSI filed a Notice of Appeal of this certification, because it was entered in complete disregard of the certification requirements of Rule 23, F.R.C.P.

On February 18, 1976, the Respondents moved to dismiss NOPSI's appeal as not appealable *of right* under 28 U.S.C.A. §1292(a), and on the further ground that NOPSI did not seek certification of the Order of December 12, 1975, under 28 U.S.C.A §1292(b).

On March 17, 1976, the Court of Appeals for the Fifth Circuit granted Respondents' Motion and dismissed NOPSI's appeal, without opinion, citing decisions by it holding that an order *granting* class action certification is not appealable of right.

Action No. 70-2946, United States District Court, Eastern District of Louisiana.

7-NOPSI's Interrogatory Nos. 19-22, and Respondent's objections thereto, are printed in the Appendix to this Petition at pages 20 to 24 threof.

8-NOPSI's Interrogatory Nos. 23-36, and Respondent's objections thereto, are printed in the Appendix to this Petition, at pages 24 to 36 thereof.

9-NOPSI's Interrogatory No. 38, and the answers of the Respondents, is printed in the Appendix to this Petition, at pages 38 to 40 thereof.

10-NOPSI's Interrogatory No. 37, and Respondent's objections thereto, is printed in the Appendix to this Petition, at pages 36 to 37 threcf.

IV.

QUESTIONS PRESENTED

1. May the Court of Appeals disregard Your Honors' decision in *Eisen v. Carlisle and Jacquelin,* 417 U.S. 156, 40 L. Ed. 2d 732 (1974) ("*Eisen*") and hold that a class action certification is never appealable *of right?*

2. Where no class was shown to exist before class certification by the District Court, may the Court of Appeals disregard your holding in *Eisen* that a class certification is appealable of right when an "unambiguous requirement of Rule 23" has been disregarded?

3. Since the record does not show the existence of a class as required by Rule 23, F.R.C.P., is an evidentiary hearing required in the District Court before this action may be certified to proceed as a class action.

4. Does the company-wide class certification in this case, without support in the record and without the holding of an evidentiary hearing, deprive NOPSI of property without due process of law, and authorize an unreasonable search and seizure of NOPSI's business records, in violation of the Fourth and Fifth Amendments to the United States Constitution?

V.

CONSTITUTIONAL PROVISIONS, STATUTES AND FEDERAL RULES INVOLVED

The Constitutional provisions, statutes and rules involved in this Petition are the Fourth and Fifth Amendments to the United States Constitution; 28 U.S.C.A. §1291; 28 U.S.C.A. §2072; and Rule 23, Federal Rules of Civil Procedure.

VI.

REASONS FOR GRANTING THE WRIT

The orders of the courts below:

1. Disregard Your Honors' decision in *Eisen* that a class action certification is appealable of right; particularly in cases where an "unambiguous requirement of Rule 23" has been disregarded;
2. Conflict with at least one other circuit which has relied on *Eisen* in allowing appeal from orders of class certification, *of right;*
3. Disregard the "unambiguous requirement of Rule 23" that a class must be shown to exist before certification of an action to proceed as a class action;
4. Disregard the necessity for an evidentiary hearing to determine the existence of a class, when the record affirmatively shows the absence of a class;
5. Threaten to deprive NOPSI of property without due process of law and to subject NOPSI to an unreasonable search and seizure of its business records, in violation of the Fourth and Fifth Amendments to the United States Constitution.

Each of these reasons warrants Your Honor's issuance of a writ of certiorari to review, and ultimately to set aside, the orders of the courts below.

A.

YOUR HONORS' HOLDING IN *EISEN* WAS DISREGARDED BY THE FIFTH CIRCUIT COURT OF APPEAL

In *Eisen v. Carlisle and Jacquelin, supra,* it was urged that an order *granting* class action certification was appealable *of right,* under 28 U.S.C.A. §1291, and Your Honors said:[11]

"...We agree..."

Your Honors found that the order fell "... in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action too important to be denied review, and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated...."[12]

The class certification involved here, no less than the certification involved in *Eisen,* finally determines independent and separable rights too important to be denied immediate review,[13] and NOPSI submits that here, as in *Eisen,* Your Honors will "agree" that the certification is

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11-417 U.S. at 170, 40 L. Ed. 2d at 744.

12-**Cohen v. Beneficial Industrial Loan Corporation**, 337 U.S. 541, 546, 93 L. Ed. 1528, 1536 (1949).

13-Your Honors, and the Fifth Circuit, too, have recognized that certification of a class determines rights independent of and separable from the merits of the main demand, **Eisen, supra**, 417 U.S. at 177-178, 40 L. Ed. 2d at 748-749 and **Huff v. N.D. Cass Co. of Alabama,** 485 F. 2d 710, 713-714 (5th Cir. 1973).

appealable, *of right*. If not, there is an urgent need that certiorari issue to clarify the statements to that effect in *Eisen* and to determine whether the decision below is in conformity with that decision.[14]

The Fifth Circuit has also placed itself squarely in conflict with the Second Circuit,[15] which has construed Your Honors' decision in *Eisen* as authorizing an appeal of class certification *of right*, and certiorari should issue to resolve what has become a serious conflict within the circuits regarding the meaning and effect of *Eisen*.[16]

B.

AT THE VERY LEAST *EISEN* HELD THAT A CLASS CERTIFICATION IN DISREGARD OF AN "UNAMBIGUOUS REQUIREMENT OF RULE 23" IS APPEALABLE OF RIGHT

In *Eisen* Your Honors' were faced with a certification in disregard of an "unambiguous requirement of Rule 23"[17] and you held that order appealable *of right*.

Here, Rule 23 F.R.C.P. similarly required a showing that a class existed which "needed representing" before the action could be certified to proceed as a class action,[18] but, as in *Eisen*, the District Court ignored[19] this "...unambiguous requirement of Rule 23,"[20] with the result here, as in *Eisen*, of allowing Respondents "...to secure the benefits of a class action without first satisfying the requirements for it..."[21] An added result here is the enormous burden and expense which will be imposed upon NOPSI in defending this action on a company-wide basis, as well as the additional drain upon an already burdened federal court system in handling and managing a class action which has no limits.

Rule 23, cannot be so lightly ignored, for it was promulgated by this Court pursuant to the Enabling Act of 1934, as amended in 1966, 28 U.S.C.A. §2072, and as such it is a manifestation of the Congressional power to make laws, *Hanna v. Plumer*, 380 U.S. 460, 14 L. ed 2d 8 (1965). The District Court below, no less than this Court, is bound "...to construe and enforce the constitution and the laws of the land *as they are*..."[22] and not to legislate on the basis of personal inclination.

The patent failure of the District Court below to require the "exacting standard of proof" provided by Rule 23 clearly warrants review of its action by certiorari,[23] particularly

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14-**First National Bank v. Cities Service Co.**, 391 U.S. 253, 259, 20 L. Ed. 2d 569, 575 (1968); and **U.S. v. Pyne**, 313 U.S. 127, 131, 85 L. Ed. 2d 1231, 1234 (1941).

15-**Herbst v International Telephone and Telegraph Corp.**, 495 F. 2d 1308 (2nd Cir. 1974).

16-**Nicholas v. United States**, 384 U.S. 678, 681, 16 L. Ed. 2d 853, 858 (1966); **FTC v. Flotill Products**, 389 U.S. 179, 181, 19 L. Ed. 2d 398, 401 (1967); and **United States v. Demko**, 385 U.S. 149, 150, 17 L. Ed. 2d 258, 260 (1966).

17-417 U.S. at 176, 40 L. Ed. 2d at 748.

18-**Indianapolis School Commissioners v. Jacob**, 420 U.S. 128, 129-130, 43 L.Ed. 2d 74, 78 (1975); and **Zahn v. International Paper Company**, 414 U.S. 291, 38 L. Ed. 2d 511 (1973).

19-The requirement was ignored notwithstanding the repeated holding of the Fifth Circuit that "...the members of a class must be capable of definite identification as to being either in or out of it (Citations omitted). Plaintiff cannot make this a class action by merely calling it such..." **Chaffee v. Johnson**, 229 F. Supp. 445, 448 (S.D. Miss. 1964) aff'd 352 F. 2d 514 (5th Cir. 1965) cert. den. 384 U.S. 956, 16 L.Ed 2d 553; **Clark v. Thompson**, 206 F. Supp. 539, 542 (S.D. Miss. 1962) aff'd per curiam 313 F. 2d 637 (5th Cir. 1963) cert. den. 375 U.S. 951, 11 L.Ed 2d 321; **DeBremaecker v. Short**, 433 F. 2d 733, 734 (5th Cir. 1970); **Danner v. Phillips Petroleum Company**, 447 F. 2d 159 (5th Cir. 1971); **Bolin Farms v. American Cotton Shippers Association**, 370 F. Supp. 1353 (W.D. La. 1974) aff'd 515 F. 2d 508 (5th Cir. 1975); and **Pegues v. Bakane**, 445 F. 2d 1140, 1142 (5th Cir. 1971).

20-417 U.S. at 176, 40 L. Ed. 2d at 748

21-417 U.S. at 177, 40 L. Ed. 2d at 748

22-**Evans v. Abney**, 396 U.S. 435, 447, 24 L. Ed. 2d 634, 645 (1970) (emphasis added); **Ferguson v. Skrupa**, 372, U.S. 726, 730, 10 L. Ed. 2d 93, 97 (1963); **Kahn v. Shevin**, 416 U.S. 351, 356-357, 40 L. Ed. 2d 189, 193-194 note 10 (1974); and **62 Cases of Jam v. United States**, 340 U.S. 593, 596, 95 L. Ed. 567, 570 (1951).

23-**Baumgartner v. United States**, 322 U.S. 665, 670-671, 88 L. Ed. 1525, 1529 (2944), **Great A & P Tea Co. v. Supermarket Equipment Corp.**, 340 U.S. 147,

where, as here, the requirements of Rule 23''...have been practically nullified by a District Judge.''[24]

C.

WHERE THE RECORD DOES NOT SHOW THE EXISTENCE OF A CLASS AN EVIDENTIARY HEARING MUST BE HELD PRIOR TO CERTIFICATION

Where the record does not show the existence of a class which ''needs representing'', Rule 23 at the very least insists that an *evidentiary hearing* be held to verify that a class exists *before* an employer can be forced into the expense and disruption of defending an action on a *company-wide,* class basis. This is certainly true as a matter of constitutional right[25] and a number of Fifth Circuit decisions have so held,[26] but were ignored by the District Court below. In fact, also ignored by that Court was the previous recent decision of Judge Edward Boyle in *Henry Faggen, v. New Orleans Public Service, Inc., et al.,* Civil Action No. 70-2946, United States District Court for the Eastern District of Louisiana, involving the Transit

153-154, 95 L. Ed. 162, 167 (1950), and **United States v. Parke, Davis and Co.,** 362 U.S. 29, 44-45, 4 L. Ed. 2d 505, 515 (1960).

24-**Los Angeles Brush Manufacturing Corp. v. James,** 272 U.S. 701, 707, 71 L. Ed. 481, 484 (1927); **LaBuy v. Howes Leather Co.,** 352 U.S. 349, 256, 1 L. Ed. 2d 290, 297 (1957); and **Schlagenhauf v. Holder,** 379 U.S. 104, 112, 13 L. Ed. 2d 152, 160 (1964); and **United States v. Schaefer Brewing Co.,** 356 U.S. 227, 230, 2 L. Ed. 2d 721, 725 (1958).

25-Cf. **Boddie v. Connecticut,** 401 U.S. 371, 378-379, 28 L. Ed. 2d 113, 119-120 (1971); **Goldberg v. Kelly,** 297 U.S. 254, 261, 25 L. Ed. 2d 287, 295 (1970); **Sniadach v. Family Finance Corp.,** 395 U.S. 337, 342, 23 L. Ed. 2d 349, 354 (1969); and **Board of Regents v. Roth,** 408 U.S. 564, 33 L. Ed. 2d 548 (1972).

26-**Huff v. N.D. Cass Co.,** 485 F. 2d 710 (5th Cir. 1973); **Jones v. Diamond,** 519 F. 2d 1090, (5th Cir. 1975); **Cruz v. Estelle,** 497 F. 2d 496 (5th Cir. 1974); and **Johnson v. Georgia Highway Express, Inc.,** 417 F. 2d 1122 (5th Cir. 1969).

Department of NOPSI, in which Judge Boyle emphasized:

> ''...we must await an evidentiary hearing to determine whether a class action would be proper in this case and, if so, to what extent will it be maintained.''[27]

The need for a hearing is particularly evident in this case where the record reflects that the estimated cost to NOPSI of complying with the *company-wide* discovery commenced by Respondents will be approximately $300,000.00,[28] to say nothing of the disruption of and interference with NOPSI's business operations.

It is not enough to say that the District Court could always strike or limit the class in the later course of these proceedings. For NOPSI, that remedy would be ''too little and too late''. *Gonzales v. United States*, 348 U.S. 407, 99 L. Ed. 467, 474 (1955).

D.

THE COMPANY-WIDE CLASS CERTIFICATION IN THIS CASE WITHOUT SUPPORT IN THE RECORD WOULD SUBJECT NOPSI TO AN UNREASONABLE SEARCH AND SEIZURE OF ITS BUSINESS RECORDS

Without any support in the record, Respondents have commenced discovery regarding virtually every employment decision made by NOPSI since 1965 in each of its 16 Departments other than the Transit Department.[29] But without support in the record Respondents have made no showing of ''relevancy'' or ''materiality'' sufficient to support this unlimited inquiry into all facets of NOPSI's business operation, and ''...it is contrary to the first

27-A copy of Judge Boyle's Memorandum Order in **Faggen** is printed in the Appendix to this Petition, at pages 41 to 46 thereof.

28-The estimated expense to NOPSI of complying with Interrogatory Nos. 8-29 of Plaintiffs' Second Set of Interrogatories is established in the Affidavit of John L. Prendergast. These Interrogatories, and that Affidavit, are printed in the Appendix to this Petition, at pages 47 to 52 and 13 to 16 thereof.

29-See note 28, **supra.**

principles of justice to allow a search through all (NOPSI's) records, relevant or irrelevant, in the hope that something will turn up.''[30]

Such a ''search and seizure'' is patently ''unreasonable'', and in clear violation of the 4th Amendment to the United States Constitution.[31]

VII.

CONCLUSION

To NOPSI, this Court's decision in *Eisen* is clear, and the requirements of Rule 23 are ''unambiguous'', and neither can be disregarded.

In this case, though, both were disregarded, first Rule 23 by the District Court in its class certification, and second *Eisen*, by the Court of Appeals in dismissing NOPSI's appeal of that certification.

This case presents an urgent need for issuance of certiorari to clarify what has apparently become doubt among the lower Courts as to the meaning of *Eisen* and as to the necessity of adhering to the certification requirements of Rule 23. This case also affords this Court an excellent opportunity to offer much needed guidance to the lower Courts who are called upon to confront and to rule upon an ever increasing number of ''class actions''.

30-**Federal Trade Commission v. American Tobacco Co.,** 264 U.S. 298, 68 L. Ed. 696 (1924).

31-**Hale v. Henkel,** 201 U.S. 43, 77, 50 L. Ed. 652, 666 (1906); and **Schultz v. Yeager,** 293 F. Supp. 794, 799-800 (D.N.J. 1967) aff'd 403 F. 2d 639 (3rd Cir. 1968) cert. den. 394 U.S. 961, 22 L. Ed. 2d 562 and citations therein.

NOPSI urges that a writ of Certiorari issue herein, and that upon review the class certification by the District Court be set aside, and the class action portions of Respondents' complaint be dismissed, or alternatively, that this matter be remanded to the District Court with instruction that an evidentiary hearing be held to determine the existence of a class before this action may proceed further as a class action.

New Orleans, Louisiana, this 15th day of June, 1976.

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CERTIFICATE

I hereby certify that a copy of the above and foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit has been served upon the following counsel of record for Respondants by depositing said copy, postage prepaid and properly addressed, in the United States mail this 15th day of June, 1976:

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APPENDICES

APPENDIX A

In The United States Court Of Appeals
For The Fifth Circuit

No. 76-1243

POWER DIVISION ASSOCIATION,
ET AL., and all other persons
similarly situated,

Plaintiffs-Appellees,

versus

NEW ORLEANS PUBLIC SERVICE
CORPORATION,

Defendant-Appellant

Appeal from the United States District Court for the
Eastern District of Louisiana

Before COLEMAN, GOLDBERG, and GEE, Circuit Judges.

BY THE COURT:

IT IS ORDERED that appellees' motion to dismiss the appeal is GRANTED. See Bennett v. Behring Corporation, 5 Cir., 1976, 525 F. 2d 1202.

APPENDIX B

Minute Entry
December 10, 1975
Heebe, J.

POWER DIVISION ASSOCIATION, et al. — CIVIL ACTION

versus — NO. 75-1635

NEW ORLEANS PUBLIC SERVICE CORPORATION, etc. — SECTION B

This case is brought under 42 U.S.C. §2000e, *et seq.*, and 42 U.S.C. §1981, for racial and sexual discrimination in employment. This case is before us on plaintiffs' motion to certify it as a class action and defendant's motion to dismiss the class action or, in the alternative, to compel plaintiffs to answer interrogatories and to limit the class.

Upon review of the requirements of Federal Rules of Civil Procedure 23(a) and 23(b) (2), which we feel have been met, we certify the following class as proper:

1) All past, present and future black, non-supervisory employees since July 1, 1965, in all divisions of New Orleans Public Service Corporation (NOPSI) except the Transit Division, and

2) All past, present and future female, non-supervisory employees since July 1, 1965, in all divisions of NOPSI except the Transit Division.

Plaintiffs also move for determination of the class representatives. We certify Myrna T. Chagnard as the representative for the class of females outlined *supra*. We certify Robert W. Gould, Obery Cooper, Jr., and Willie L. Williams as the representatives of the class of blacks defined *supra*.

Plaintiffs also seek to have Charles V. Schindler, the white, male president of Power Division certified as a representative of both the classes outlined *supra*. It is a fundamental principle that a class representative must be a member of the class he seeks to represent. Sosna v. Iowa, ___U.S___, 42 L. Ed. 2d 532, 542 (1975). Since Mr. Schindler is neither female nor black, he cannot be certified as a class representative.

Plaintiffs also seek to have the Power Division Association, an unincorporated union, named as a class representative for both of the classes outlined *supra*. There can be no doubt that an organization can represent the interests of its members without showing that there has been any impact on it alone. Sierra Club v. Morton, 405 U.S. 727 (1972). Moreover, a union's interests are also affected by racial discrimination because its failure to take affirmative action to correct such ills may violate its duty of fair representation. Ford Motor Co. v. Huffman, 345 U.S. 330, 336 (1953). Therefore, we must conclude that a union has constitutional standing to assert the interests of its members and itself in this case.

There is the further question of whether a union is an appropriate class representative. It can be argued that the union is not a member of the class that it seeks to represent, and therefore it must be denied certification as a class representative. This is an overly technical view of this requirement, and we reject it. Arkansas Education Association v. Board of Education, 446 F. 2d 763 (8th Cir. 1971).

However, there is a further objection to the naming of the union as a class representative, *viz.*, that there is a conflict of interest between its members because substantial portions of its membership are white and male. There is also the difficulty that NOPSI has filed a counter-claim against the union so it is potentially liable for part of the relief that plaintiffs seek. With the case in this posture, we do not feel that the union would be a proper

class representative because of its present conflicts of interest. EEOC v. American Telephone & Telegraph Co., 506 F. 2d 735 (3rd Cir. 1974); Air Line Stewards & S. Association v. American Airlines, Inc., 490 F. 2d 636 (7th Cir. 1973), *cert. den.* 416 U.S. 993.

Defendant claims that its white and male employees are indispensable parties to this action under Federal Rule of Civil Procedure 19. The leading case on that question in this circuit is English v. Seaboard Coast Line Railroad Co., 465 F. 2d 43, 46 (5th Cir. 1972), which held that it is within the sound discretion of a district court as to whether such employees must be joined. In this case, we believe that the paucity of seniority rights substantially precludes any danger that the rights of white employees will be adversely affected. Also, their rights may be protected by their unions. Finally, if white or male employees of NOPSI feel that their interests will be adversely affected, they may seek to intervene under Rule 24.

Defendant also argues that the unions which bargain in the other four divisions of NOPSI must be joined as indispensable parties under Rule 19. Whether or not a party is indispensable depends on all the facts and circumstances before the Court. *Compare* Kinnunen v. American Motors Corp., 56 F.R.D. 102 (E.D.Wis. 1972) (joining unions) *with* Atkinson v. Owens-Illinois, Inc., 9 E.P.D. ¶ 10,155 (N.D.Ga. 1975) (refusing to join a union).

In this case we do not feel that joinder of the other unions is necessary under Rule 19. There are no extensive seniority rights involved in this case. Plaintiffs have not alleged that these unions were involved in racial or sexual discrimination. The collective bargaining agreements they signed are nondiscriminatory on their face. Plaintiff's claim is that NOPSI has used its extensive management prerogatives in a manner that is racially and sexually discriminatory, not that the unions have been discriminatory. Therefore, we refuse to join the other unions under Rule 19 because we do not feel their interests will be adversely affected in this case.

We also note that these unions may seek to intervene under Rule 24 and that defendant may file a third-party complaint against them under Rule 14(a). Accordingly,

IT IS THE ORDER OF THE COURT that the motion of the plaintiffs for certification of the class representatives and of the class, be, and the same is hereby, GRANTED as more fully set forth above.

IT IS THE FURTHER ORDER OF THE COURT that the motions of the defendant are DENIED except to the extent that the class and its representatives have been limited as more fully set out above.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

POWER DIVISION ASSOCIATION, an unincorporated employees' association, CHARLES V. SCHINDLER, WILLIE WILLIAMS, ROBERT W. GOULD, OBERY COOPER, JR., MYRNA CHAGNARD, and all other persons similarly situated,
Plaintiffs-Appellees

NO. 76-1243

versus

NEW ORLEANS PUBLIC SERVICE INC., a Louisiana Corporation,
Defendant-Appellant

****

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned Notary Public, personally came and appeared Hero J. Edwards, Jr., who, being duly sworn, deposed and said:

1. I am employed by New Orleans Public Service Inc. in the position of Director of Personnel.

2. I am responsible for operation of the Personnel Department under the executive direction of John L. Prendergast, Vice President, Administration. The Personnel Department provides employment, training, salary administration and safety services to the various departments.

3. Myrna Chagnard, formerly employed as a station clerk, Power Department, resigned from employment by New Orleans Public Service Inc. effective January 23, 1976, in order to accept another job. This information came to my attention in the course of supervising the Personnel Department's function of filling vacancies in various departments.

4. Willie Williams, Robert W. Gould and Obery Cooper, Jr. are male employees of the Company's Power Department according to Company records and my personal observations.

5. This Affidavit and the facts stated herein are made on the basis of my personal knowledge or from facts gathered under my supervision as Director of Personnel of New Orleans Public Service Inc. I am qualified to testify to the matters stated herein.

I swear that the foregoing is true and correct to the best of my knowledge and belief.

HERO J. EDWARDS, JR.

Sworn and subscribed before
me this fifth day of March, 1976.

Floyd A. Hennen
Notary Public

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

POWER DIVISION ASSOCIATION, an unincorporated employees association, CHARLES V. SCHINDLER, WILLIE WILLIAMS, ROBERT W. GOULD, OBERY COOPER, JR. and MYRNA CHAGNARD, and all other persons similarly situated,

Plaintiffs

versus

NEW ORLEANS PUBLIC SERVICE CORPORATION, a Louisiana Corporation,

Defendant.

CIVIL ACTION

NO. 75-1635

SECTION "B"

CLASS ACTION COMPLAINT FOR DAMAGES, AND INJUNCTIVE AND *DECLARATORY RELIEF*

JURISDICTION

1. This is a class action for damages, and injunctive and declaratory relief for employment discrimination. Jurisdiction is vested in this Court by 28 U.S.C. §1343, and 42 U.S.C. §2000e-5(f) (3). This case arises under the Equal Protection Clause of the Fourteenth Amendment, 42 U.S.C. §§1981, 1983 and 1988, and 2000e-2.

PARTIES

2. Plaintiff Power Division Association is an unincorporated employees labor organization which deals with the employer, New Orleans Public Service, Inc. (N.O.P.S.I.), concerning grievances, labor disputes, wages, rates of pay, hours and other terms and conditions of employment. Plaintiff Power Division Association has black and female employees in its membership.

3. Plaintiff Charles V. Schindler is president of the Power Division Association and a white male citizen of the United States and the state of Louisiana. Plaintiff Schindler is an employee of the Power Division of N.O.P.S.I.

4. Plaintiff Myrna Chagnard is a white female citizen of the United States and the state of Louisiana. Plaintiff Chagnard is an employee of the Power Division of N.O.P.S.I. Plaintiffs Willie Williams, Robert W. Gould and Obery Cooper, Jr., are black citizens of the United States and the state of Louisiana. Plaintiffs Williams, Gould and Cooper are employees of the Power Division of N.O.P.S.I.

5. Defendant New Orleans Public Service, Inc., is a Louisiana corporation engaged in the business of providing electricity, gas and public transit to the city of New Orleans. Defendant is an employer in an industry affecting commerce as defined in 42 U.S.C. §2000e(b).

CLASS ACTION

6. Plaintiffs Williams, Gould, Cooper and Chagnard (the named parties) are representatives of a class of similarly situated black and female persons who are employed by N.O.P.S.I. in company divisions other than Transit. The class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class, and the claims of the named parties are typical of the claims of the class. The named parties will fairly and adequately protect the interests of the class. The prosecu-

tion of separate actions by the named parties would create a risk of inconsistent or varying adjudications with respect to the individual members of the class which would, in turn, establish incompatible standards of conduct for defendant employer opposing the class. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members of the class, and a class action is therefore superior to other available methods for the fair and efficient adjudication of the controversy.

STATEMENT

7. N.O.P.S.I. has intentionally and knowingly engaged in unlawful employment discrimination with respect to its employees, based upon race or sex, in divisions other than the Transit Division in the following respects:

(a) black employees and female employees are not paid the same wages for performing the same, or substantially similar, work;

(b) black employees and female employees are denied training opportunities;

(c) black employees and female employees are not promoted into the same lines of progression as are white male employees;

(d) black employees and female employees are systematically denied promotions to higher-paying jobs;

(e) black and female office clerical employees are denied equal terms, conditions and privileges of employment as enjoyed by white male office clerical employees; and

(f) black employees and female employees are denied supervisorial positions and are systematically restricted to lower job classifications.

EXHAUSTION

8. Plaintiff Schindler, on behalf of himself and the members of the Power Division Association, filed a charge of discrimination against N.O.P.S.I. with the Equal Employment Opportunity Commission (E.E.O.C.) on June 12, 1974. Charge No. TNO 4 2187. On February 28, 1975, the

E.E.O.C. notified plaintiff Schindler and the Power Division Association of their right to sue, pursuant to 42 U.S.C. §2000e-5(f) (1).

9. Neither the state of Louisiana nor the city of New Orleans has any law prohibiting discrimination in employment on the basis of race or sex.

FIRST CLAIM FOR RELIEF

10. The practices describe in ¶7, *supra*, violate the rights of plaintiffs Gould, Cooper and Williams and the black members of the class they represent, as secured by 42 U.S.C. §2000e-2(a) and 42 U.S.C. §1981. Defendant N.O.P.S.I. is liable to plaintiffs Gould, Cooper and Williams and the members of the class they represent for front-pay, back-pay and punitive damages in the amount of $1,000 for each black employee so affected.

SECOND CLAIM FOR RELIEF

11. The practices described in ¶7, *supra*, violate the rights of plaintiff Chagnard and the female members of the class she represents, as secured by 42 U.S.C. §2000e-2(a), and 42 U.S.C. §1983. Defendant N.O.P.S.I. is liable to plaintiff Chagnard and the members of the class she represents for front-pay, back-pay and punitive damages in the amount of $1,000 for each female employee so affected.

EQUITY

12. There is a real and actual controversy between the parties, as alleged herein. Plaintiffs are without an adequate remedy at law. Plaintiffs and the class they represent have suffered and will continue to suffer irreparable injury until the discriminatory practices knowingly engaged in by N.O.P.S.I. are enjoined and redressed.

DEMAND FOR JUDGMENT

WHEREFORE, plaintiffs pray that this Court:

(a) certify that this action may be maintained as a class action;

(b) preliminarily and permanently enjoin N.O.P.S.I. from continuing to engage in acts and practices which discriminate against black and female employees in the divisions of the company other than the Transit Division;

(c) award such further relief to plaintiffs Chagnard, Williams, Gould, and Cooper, and the black and female members of the class, including back-pay, front-pay and training opportunities, working terms and conditions, and promotions and transfers, as will operate to redress the discrimination and prevent the perpetuation of the effects of discrimination.

(d) award each of the plaintiffs, Chagnard, Cooper, Gould and Williams, and each member of the class affected by the discrimination $1,000 each in punitive damages pursuant to 42 U.S.C. §2000e-5(g);

(e) award plaintiffs costs, including reasonable attorneys' fees pursuant to 42 U.S.C. §2000e-5(k), and such other and further relief as may be appropriate.

Respectfully submitted,

DONALD JUNEAU, Trial Attorney
344 Camp Street, Suite 1212
New Orleans, Louisiana 70130
Telephone: 581-2688

JOHN P. NELSON, JR.,
Trial Attorney
NELSON, NELSON & LOMBARD, P.C.
344 Camp Street, Suite 1100
New Orleans, Lousisana 70130
Telephone: 523-6893

Dated: May 28, 1975

By: Donald Juneau
Attorneys for Plaintiffs

APPENDIX E

POWER DIVISION ASSOCIATION, an unincorporated employees association, CHARLES V. SCHINDLER, WILLIE WILLIAMS, ROBERT W. GOULD, OBERY COOPER, JR. and MYRNA CHAGNARD, and all other persons similarly situated,	CIVIL ACTION NO. 75-1635 SECTION "B"
Plaintiffs versus NEW ORLEANS PUBLIC SERVICE CORPORATION, a Louisiana Corporation,	CLASS ACTION COMPLAINT FOR DAMAGES, AND INJUNCTIVE AND DECLARATORY RELIEF
Defendant	

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STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned Notary Public, personally came and appeared JOHN L. PRENDERGAST, who, being duly sworn, deposed and said:

1. I am employed by New Orleans Public Service Inc. in the position of Vice President, Administration.

2. With respect to company personnel, I have executive responsibility for operation of the Personnel Department, with proper delegation to the Director of Personnel. The Personnel Department provides employment, training and

salary administrative services to the various departments.

3. New Orleans Public Service Inc. operates the following departements:

Transit
Gas
Stores
Electric Distribution
Electric Power
General Administration Office, which includes the following departments:

Accounting
Audit, Budget and Statistical
Building
Claim
Community
Community Relations
Engineering
Marketing
Medical
Personnel
Purchasing
Rate & Research
Treasurer's

4. I have supervised a review of Plaintiffs' Second Set of Interrogatories to New Orleans Public Service Inc. and have supervised a determination of the estimated number of man-hours which would be required to furnish the information sought in Interrogatory Nos. 8-24 of those Interrogatories, for all departments of New Orleans Public Service Inc. other than Transit.

5. I have also supervised a determination of the estimated weighted average hourly wage rate for all personnel required to gather the requested information and to prepare responses to Plaintiffs' Second Set of Interrogatories, taking into account a reasonable factor for

overhead and including non-productive time and fringe benefits.

6. Based upon the above determination, it is estimated that at least 21,906.25 man-hours would be required to gather compile and furnish the information sought in Interrogatory Nos. 8-24 of Plaintiffs' Second Set of Interrogatories, for all departments other than Transit at an estimated cost to New Orleans Public Service Inc. of $316,107.10.

7. If New Orleans Public Service Inc. should make its records available to plaintiffs under the "Business Records Option" provided by Rule 33, F.R.C.P., it is estimated that of this total number of 21,906.75 estimated man-hours required for answer an estimated 10,959.00 man-hours would be required of plaintiffs (assuming the same degree of efficiency as New Orleans Public Service Inc. personnel) in extracting the information sought by Interrogatory Nos. 8-24 of Plaintiffs' Second Set of Interrogatories, for all departments other than Transit, and that an estimated 10,947.25 man-hours would be required of New Orleans Public Service Inc. in gathering, assembling and making available to plaintiffs the records from which the information sought is to be obtained, at an estimated cost to New Orleans Public Service Inc. of $157,968.82.

8. New Orleans Public Service Inc. has not had sufficient time to determine or to quantify the disruptive effect upon the business operations of New Orleans Public Service Inc. which would result from the diversion of personnel necessary to answer Interrogatory Nos. 8-24 of Plaintiffs' Second Set of Interrogatories, or to make the business records of New Orleans Public Service Inc. available to plaintiffs for extraction of the information sought in those interrogatories.

9. This Affidavit and the facts stated herein are made on the basis of my personal knowledge or from facts gathered under my supervision as Vice President, Administration, of New Orleans Public Service Inc. I am qualified to testify to

the matters stated herein.

I swear that the foregoing is true and correct to the best of my knowledge and belief.

JOHN L. PRENDERGAST

Sworn to and subscribed
before me this 20th day
of February, 1976.

Floyd A. Hennen
NOTARY PUBLIC

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

POWER DIVISION ASSOCIATION, an unincorporated employees association, CHARLES V. SCHINDLER, WILLIE WILLIAMS, ROBERT W. GOULD, OBERY COOPER, JR. and MYRNA CHAGNARD, and all other persons similarly situated, *Plaintiffs,* versus NEW ORLEANS PUBLIC SERVICE CORPORATION, a Louisiana Corporation, *Defendant.*	CIVIL ACTION NO. 75-1635 SECTION "B" CLASS ACTION COMPLAINT FOR DAMAGES, AND INJUNCTIVE AND DECLARATORY RELIEF

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AFFIDAVIT OF MICHAEL J. CADE,
IN SUPPORT OF MOTION OF N.O.P.S.I. TO
DISMISS CLASS ACTION COMPLAINT OR,
ALTERNATIVELY, TO COMPEL PLAINTIFFS' ANSWER
OF INTERROGATORIES AND TO LIMIT THE CLASS

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared MICHAEL J. CADE, a person of the full

age of majority, who being by me first duly sworn did depose and say that:

He is the Senior Vice-President of New Orleans Public Service, Inc. and he has personal knowledge of the facts hereinafter set forth;

New Orleans Public Service, Inc. is a public utility engaged in the furnishing of Gas and Transit services in Orleans Parish and Electric service in that portion of Orleans Parish lying east of the Mississippi River;

In connection with its furnishing of Electric and Gas services, and with the terms, conditions and privileges of employment of its employees involved in the furnishing of these services, New Orleans Public Service, Inc. has entered into, or is presently negotiating, separate collective bargaining agreements with five different bargaining representatives of its employees in Divisions other than Transit:

1. The Cooperative Electric Distribution Division Employees Association of New Orleans, whose bargaining agreement covers 92 separate job classifications;
2. The Cooperative Power Division Employees Association of New Orleans, whose bargaining agreement covers 138 separate job classifications;
3. The Cooperative Gas Department Employees Association of New Orleans, whose bargaining agreement covers 110 separate job classificatons;
4. The Cooperative Stores Department Employees Association of New Orleans, whose bargaining agreement covers 39 separate job classifications; and
5. The Cooperative Building Maintenance Employees Association of New Orleans, which is presently bargaining with New Orleans Public Service, Inc. as to the terms and conditions of employment regarding approximately separate job classifications.

Each of the bargaining representatives described above represent black and white and male and female employees of New Orleans Public Service, Inc.;

The various different job classifications covered by each of the collective bargaining agreements described above are separate and distinct in purpose, operation and function;

The respective bargaining representatives negotiating each of the bargaining agreements described above, separately administer and implement the terms and provisions of each agreement, and in particular exercise authority and responsibility over the processing of grievances for alleged violations of the agreements.

In addition to the employees of New Orleans Public Service, Inc. represented by the exclusive bargaining representatives described above, approximately 38% of the employees of New Orleans Public Service, Inc. are non-contract employees, including supervisors who work in various departments and who are not represented by or through bargaining agents, and w[illegible]se terms, conditions and privileges of employment differ and are not the subject of collective bargaining agreements.

MICHAEL J. CADE,

SWORN TO AND SUBSCRIBED
BEFORE ME this 31st. day
of October, 1975.

Floyd A. Hennen
Notary Public

APPENDIX G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

POWER DIVISION ASSOCIATION, et al. *Plaintiffs* versus NEW ORLEANS PUBLIC SERVICE CORPORATION, a Louisiana Corporation, *Defendant.*	CIVIL ACTION NO. 75-1635 SECTION "B" CLASS ACTION COMPLAINT FOR DAMAGES, AND INJUNCTIVE AND DECLARATORY RELIEF

PLAINTIFFS' OBJECTIONS TO DEFENDANT'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 (a), Federal Rules of Civil Procedure, plaintiffs object to the following interrogatories by defendant, and under Local Rule 3.12, herein is set forth each interrogatory objected to, and the basis of the objection thereto:

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INTERROGATORY NO. 19:

With respect to the allegation in paragraph 6 of the Complaint that membership in the "class" represented is so numerous that joinder of all members is impracticable, state the following:

(a) The number of persons that you claim to be members and/or representatives of the alleged "class" and the name, address, race, sex, division and depart-

ment of defendant in which employed, and job classification of each;

(b) The length of time each has been employed in his or her present job classification and the name and address of the person affiliated with defendant who was responsible for assigning and/or deciding upon this job classification;

(c) Each prior job classification while employed by defendant, the dates of employment in each prior job classification, the name and address of his or her immediate supervisor and/or department in each prior job classification, and the name and address of the person affiliated with defendant responsible for assigning and/or deciding upon each job classification.

(d) Describe in detail the circumstance surrounding each change in job classification, whether by promotion, demotion, transfer or otherwise.

INTERROGATORY NO. 22:

For each alleged "class" member and/or representative identified in Interrogatory No. 19, state the following:

Has he or she ever made any complaint concerning suggestions for improvements in, or in any other way indicated your dissatisfaction with, any employment practices of defendant? If so, for each such occasion, please give the following information:

(a) The date of each such occasion;

(b) The name and address of the employee(s) or representative(s) of defendant involved;

(c) A full description of the employment practice involved;

(d) A full description of that aspect of said employment practice which he or she found unsatisfactory, and a statement of the reasons why;

(e) Whether or not, in response to the complaint, suggestion, or otherwise, any corrective action was taken by defendant;

(f) Whether or not, in response to the complaint, suggestion, or otherwise, defendant took any action, either by way of praise or promotion, or by way of discipline or demotion, or otherwise, and if so, please state:

(I) The action taken;

(II) The name and address of all persons acting on behalf of defendants in connection therewith.

INTERROGATORY NO. 20:

For each alleged class member and/or representative identified in Interrogatory No. 19 above, state the following:

(a) Describe in detail each separate occasion and/or occurrence which you allege, claim or believe makes that person aggrieved on the basis of his race or sex, the date or approximate date of each; and

(b) State whether each instance of discrimination related to wages, rates of pay, promotion, training opportunities, terms, conditions and privileges of employment, etc.; and describe in full the circumstances surrounding each instance, occasion or occurrence;

(c) For each occasion or occurence, describe the method or means by which the alleged discrimination was accomplished, the method or means by which said discrimination was or is directed to or applied against the class member and/or representative;

(d) Describe in full the date(s) or approximate date(s) upon which, and the means or methods by which, the class member and/or representative first received knowledge of the discrimination, and state the name, address, race and sex of each person whom you allege was affected thereby;

(e) Describe each attempt, and the date or approximate date thereof, made to seek redress of the alleged discrimination, including but not limited to union contract grievance or arbitration procedures, voluntary appeals to defendant, administrative proceedings, EEOC charges, etc.

(f) For each occasion or occurence of discrimination state the name, address, division and department of defendant in which employed, and job classification of each person affiliated with defendant through whom you allege the discrimination was accomplished, effectuated, maintained, or committed, describe that person's relationship with and/or access to the class member and/or representative, and describe the method or means by which said person was able to make allegedly discriminatory decisions affecting the class member and/or representative;

(g) For each occasion or occurence of discrimination, state the name, address, race, sex, division and department of defendant in which employed, and job classification of each employee of defendant whom you claim was favored over the class member and/or representative, and describe the benefits which were allegedly received by such favored person, but which were denied to the class member and/or representative.

INTERROGATORY NO. 21:

For each alleged "class" member and/or representative identified in Interrogatory No. 19, state the following:

(a) Whether he or she was ever offered a promotion by the defendant;

(b) If so, please give separately for each such offer the following information:

(1) The date or approximate date of each such offer;

(2) The name, race and then job title of the official or employee of defendant who made the offer;
(3) His or her job classification at the time of each offer;
(4) The job, rate of pay (excluding shift differential), shift, department and plant involved in each offer of promotion and whether these specifics were communicated along with the offer, and if so, by whom;
(5) Whether he or she accepted or rejected the offer; and

(I) If it was accepted and he or she did not receive the job, state the reason and identify the officials or employees of defendant involved in making this determination;

(II) If it was rejected, state the reason for the rejection.

OBJECTION:

Interrogatories 19, 20, 21 and 22 involve questions concerning the class which named plaintiffs represent. Plaintiffs are seeking to determine the extent of the class which is composed of all employees of the company outside of the Transit Division. When plaintiffs obtain the information requested in their first series of interrogatories, it will be supplied to the Court. Until this happens, these interrogatories cannot be answered because they call for information not readily available to the plaintiffs or their counsel.

INTERROGATORY NO. 23:

With respect to the allegation in paragraph 7(a) of the Complaint that "...black employees and female employees are not paid the same wages for performing the same, or

substantially similar work...", state the following:

(a) The name, address, race, sex, division and department of defendant in which employed and job classification of each black employee and each female employee of defendant to whom reference is made in paragraph 7(a) of the Complaint.

(b) Describe in detail all job positions and/or job classifications, and the division and department of defendant in which each exists, which you maintain involved the "same" work, and describe the common duties and functions of each said job classification.

(c) Describe in detail all job positions and/or job classifications, and the division and department of defendant in which each exists, which you maintain involves "substantially similar" work and describe the common duties or functions of each said job classification.

INTERROGATORY NO. 24:

For each black employee and each female employee named in the preceding interrogatory, state the following:

(a) Describe the dates, or approximate dates, of each period of time during which the employee allegedly did not receive equal pay or wages for equal work;
(b) Describe the employee's job classification, division and department, the rate of pay or wages during each of the aforementioned periods of time;
(c) State the name, address, race, sex, division of defendant in which employed, and job classification of each employee of defendant whom you allege receives or has received higher wages and/or pay for the same and/or substantially similar work, and state the dates, or approximate dates, of each period during which said higher rate was received, and the amount thereof;

(d) State the date(s), or approximate date(s) on which, and the means or methods by which, the employee first discrovered that he or she was being paid a wage rate less than that allegedly paid other persons for the same or substantially similar work.

(e) Describe each attempt, and the date or approximate date thereof, made by the employee to seek redress of the alleged discrimination in wages or rates of pay, including but not limited to union contract grievance or arbitration procedures, voluntary appeals to defendant, administrative proceedings, EEOC charges, etc.

INTERROGATORY NO. 25:

With respect to the allegation in paragraph 7(b) of the Complaint that "...black employees and female employees are denied training opportunities...," state the following:

(a) The name, address, race, sex, division of defendant in which employed, and job classification of each black employee, and each female employee, of defendant to whom reference is made in paragraph 7(b) of the Complaint.

(b) Describe in detail each training opportunity referred to in paragraph 7(b) of the Complaint;

(c) Describe the nature, purpose and function of each training opportunity and the job classifications, and division and department of defendant to which each training opportunity related.

INTERROGATORY NO. 26:

For each black employee, and each female employee, named in the preceding interrogatory, state the following:

(a) Describe in detail each training opportunity sought by the employee but denied;

(b) State the date, or approximate date of each application for, and each denial of, each training opportunity;

(c) State the name, address, race, sex, division or and department of defendant in which employed, and job classification of each person to whom application for each training opportunity was made, and each person denying each application;

(d) State the name, address, race, sex, division and department of defendant in which employed, and job classification of each person to whom application for each training opportunity was made, and each person denying each application;

(d) State the name, address, race, sex, division and department of defendant in which employed, and job classification of each employee of defendant who allegedly received each training opportunity denied the employee, and the date, or approximate date of said receipt;

(e) Describe the method by which said "training opportunities" were denied;

(f) State the name, address, race, sex, division and department of defendant in which employed, and job classification of each person involved in any determination or decision respecting participation in each training opportunity;

(g) State the date, or approximate date, on which, and the means or methods by which, the employee first discovered that he or she had been denied each training opportunity because of race or sex;

(h) Describe each attempt, and the date or approximate date thereof, made by the employee to seek redress of the alleged denial of training opportunities, including but not limited to union contract grievance or arbitration procedures, voluntary appeals to defendant, administrative proceedings, EEOC charges, etc.

INTERROGATORY NO. 27:

With respect to the allegation in paragraph 7(c) of the Complaint that "...black employees and female employees are not promoted into the same lines of progression as are white male employees,...", state the following:

(a) The name, address, race, sex, division and department of defendant in which employed, and job classification of each black employee, and each female employee, of defendant to whom reference is made in paragraph 7(c) of the Complaint;
(b) Describe in detail each line of progression referred to in paragraph 7(C) of the Complaint, and the job classifications, and division and department of defendant connected with each.

INTERROGATORY NO. 28:

For each black employee, and each female employee, named in the preceding interrogatory, state the following:

(a) Describe in detail each line of progression to which promotion has allegedly been denied the employee;
(b) Describe in detail each application and/or attempt, and the date or approximate date thereof, made by the employee for promotion into each line of progression, and state the name, address, division and department of defendant in which employed, and job classification of each person to whom each application and/or attempt was made;
(c) State the name, address, race, sex, division and department of defendant in which employed, and job classification of each white male employee of defendant whom you allege has been promoted into a line of progression denied the employee, and the date or approximate date of his or her promotion;

(d) Describe the method by which promotion into each line of progression has been denied the employee;
(e) State the name, address, division and department of defendant in which employed and job classification of each person involved in determining or deciding upon promotions into each line of progression;
(f) State the date or approximate date on which, and the means and methods by which, the employee first discovered that he or she had been denied promotion into each line of progression because of race or sex;
(g) Describe each attempt, and the date or approximate date thereof, made by the employee to seek redress of the alleged denial of promotion into each line of progression, including but not limited to union contract grievance or arbitration procedures, voluntary appeals to defendant, administrative proceedings, EEOC charges, etc.

INTERROGATORY NO. 29:

With respect to the allegation in paragraph 7(d) of the Complaint that "...black employees and female employees were systematically denied promotions to higher paying jobs...", state the following:

(a) The name, address, race, sex, division and department of defendant in which employed, and job classification of each black employee and each female employee of defendant to whom reference is made in paragraph 7(d) of the Complaint.
(b) Describe in detail each of the higher paying jobs to which reference is made in paragraph 7 (d) of the Complaint, and state the job classification, and division and department of defendant, of each.

INTERROGATORY NO. 30:

For each black employee, and each female employee, named in the preceding interrogatory, state the following:

(a) Describe in detail each of the allegedly higher paying Jobs to which the employee has allegedly been denied promotion;

(b) Describe in detail each application and/or attempt, and the date or approximate date thereof, made by the employee for promotion into each higher paying job, and state the name, address, division and department of defendant in which employed, and job classification of each person to whom each application and/or attempt was made;

(c) State the name, address, race, sex, division and department of defendant in which employed, and job classification of each employee of defendant whom you allege was promoted into each higher paying job denied the employee, and the date, or approximate date, of his or her promotion;

(d) Describe the method by which promotion to each higher paying job has been denied the employee;

(e) State the name, address, division and department of defendant in which employed and job classification of each person involved in determining or deciding upon promotion to each higher paying job;

(f) State the date or approximate date on which, and the means and methods by which, the employee first discovered that he or she had been denied promotion to a higher paying job because of race or sex;

(g) Describe each attempt, and the date or approximate date thereof, made by the employee to seek redress of the alleged denial of promotions to each higher paying job, including but not limited to union contract grievance or arbitration procedures, voluntary appeals to defendant, administrative proceedings, EEOC charges, etc.

INTERROGATORY NO. 31:

With respect to the allegation in paragraph 7(e) of the Complaint that "...black and female office clerical employees are denied equal terms, conditions and privileges of employment as enjoyed by white male office clerical employees...", state the following:

(a) The name, address, race, sex, division and department of defendant in which employed, and job classification of each black employee, and each female employee, of defendant to whom reference is made in paragraph 7 (e) of the Complaint.

(b) Describe in detail each term, condition and privilege of employment to which reference is made in paragraph 7(e) of the Complaint, and state the division and department of defendant, and job classification in which each exists.

INTERROGATORY NO. 32:

For each black employee, and each female employee name in the preceding interrogatory, state the following:

(a) Describe in detail each term, condition, and privilege of employment allegedly denied the employee, and state the dates, or approximate dates, of each and every period during which each term, condition, or privilege of employment was, or has been denied the employee;

(b) State the name, address, division and department of defendant in which employed, and job classification of each white male employee of defendant whom you allege enjoyed each term, condition, and privilege of employment which you allege has been denied to the employee;

(c) Describe the method by which each term, condition and privilege of employment has been denied the employee;
(d) State the name, address, division and department of defendant in which employed, and job classification of each person involved in determining and/or deciding upon each term, condition, or privilege of employment;
(e) State the date, or approximate date, on which, and the means and methods by which, the employee first discovered that he or she had been denied each term, condition, or privilege of employment because of race or sex;
(f) Describe each attempt, and the date or approximate date thereof, made by the employee to seek redress of the alleged denial of each term, condition, or privilege of employment, including but not limited to union contract grievance or arbitration procedures, voluntary appeals to defendant, administrative proceedings, EEOC charges, etc.

INTERROGATORY NO. 33:

With respect to the allegation in paragraph 7 (f) of the Complaint that "...black employees and female employees are denied supervisorial positions and are systematically restricted to lower job classifications...", state the following:

(a) The name, address, race, sex, division and department of defendant in which employed, and job classification of each black employee, and each female employee, of defendant to whom reference is made in paragraph 7 (f) of the Complaint.
(b) Describe in detail each supervisorial position referred to in paragraph 7 (f) of the Complaint, and state the division and department of defendant in which each exists;

(c) Describe in detail each lower job classification to which reference is made in paragraph 7 (f) of the Complaint, and state the division and department of defendant in which each exists.

INTERROGATORY NO. 34:

For each black employee, and each female employee, named in the preceding interrogatory, state the following:

(a) Describe in detail each supervisorial position allegedly denied the employee, and state the dates, or approximate dates of each denial;
(b) Describe each alleged lower job classification, and the division and department of defendant in which each exists, from which the employee sought promotions to each supervisorial position;
(c) Describe in detail each application and/or attempt, and the date or approximate date thereof, made by the employee for promotion or access into each supervisorial position, and state the name, address, division and department of defendant in which employed, and job classification of each person to whom each application and/or attempt was made;
(d) State the name, address, race, sex, division and department of defendant in which employed, and job classification of each employee of defendant whom you allege holds, or was promoted into, each supervisorial position allegedly denied the employee, and the date or approximate date of his or her placement and/or promotion to the said position;
(e) Describe the method by which placement and/or promotion to each supervisorial position has been denied the employee;
(f) State the name, address, division and department of defendant in which employed, and job classification of each person involved in determining and/or

deciding upon placement and/or promotion into each supervisorial position.

(g) State the date or approximate date on which, and the means and methods by which, the employee first discovered that he or she had been denied each supervisorial position because of race or sex;

(h) Describe each attempt, and the date or approximate date thereof, made by the employee to seek redress of the alleged denial of each supervisorial position, including but not limited to union contract grievance or arbitration procedures, voluntary appeals to defendant, administrative proceedings, EEOC charges, etc.

INTERROGATORY NO. 35:

With respect to each separate allegation of discrimination set forth in paragraph 7 (a) through (f) of the Complaint, state the following:

(a) All facts (including statistics) known to you upon which you have relied in making each allegation;

(b) All documents of whose existence you are aware, which in your judgment tend to support, or relate to, each separate allegation of discrimination, or to the underlying facts which you have disclosed in response to subparagraph (a) above;

(c) Please state (I) the name of the individual or individuals who prepared each document which you identify in response to subparagraph (b), (II) the date of the preparation of each such document, and (III) the circumstances surrounding the preparation of each such document, including the reason for the preparation of each such document;

(d) Please give the name and present address of the person or persons having custody of the original of each document disclosed in response to sub-

paragraph (b) above, and the name and present address of all persons having copies of each such document.

INTERROGATORY NO. 36:

With respect to each separate allegation of discrimination described in paragraphs 7 (a) through (f) of the Complaint, state the following:

(a) The name, address, present employer, and present employer's address of each person having knowledge tending to support, or relating to, the allegations of paragraph 7 of your Complaint, or having knowledge tending to support, or relating to, the underlying allegations of fact of that paragraph of the Complaint;

(b) The dates, places, and circumstances under which you first obtained knowledge of the facts which you allege in paragraph 7 of your Complaint, or of the allegations of fact underlying that paragraph of the Complaint, and upon which you rely in support of said allegation;

(c) The means, method and/or source by which you first acquired knowledge of the allegedly discriminatory practices described in paragraph 7 of the Complaint, or knowledge of any fact which either resulted in your discovery of the alleged discriminatory practices or which prompted your further inquiry which led to the discovery of said practices.

OBJECTION:

Interrogatories 23 through 36 seek information which is not readily available to plaintiffs and thus cannot be answered at this time. Moreover, the specific complaints as to the pattern and practice of employment discrimination

which were relied upon in the drafting of the complaint were supplied to plaintiffs' counsel by the named plaintiffs. Insofar as the general allegations of discriminatory practices by the company were visited upon each of the named plaintiffs, the interrogatories will be answered with the necessary detail when the other data pertaining to these interrogatories is obtained from defendant. A failure to answer as to a particular discriminatory practice, e.g., unequal working conditions, lack of training opportunities, etc., is not a waive of that portion of the claim, nor does it mean that the company does not engage in such practices with respect to other members of the class represented by plaintiffs. These answers will be supplied when such information comes into the possession of plaintiffs or their counsel.

INTERROGATORY NO. 37:

With respect to your claims in paragraphs 10 and 11 of the Complaint for front pay, back pay and punitive damages in the amount of $1,000.00 for black and female employees allegedly affected by discrimination, state the following:

(a) Describe with particularity the method by which you computed the amount of front pay, back pay and punitive damages;

(b) For each class member and/or representative that you claim has been affected by the allegedly discriminatory practices described in your Complaint, state the dates, or approximate dates, of each period of time during which you claim that the employee was affected and/or aggrieved as a result of each discriminatory practice.

(c) For each class member and/or representative that you claim has been affected by the allegedly discriminatory practices, state the period during which you claim that each employee is entitled to (1) front pay; (2) back pay.

(d) Describe in detail the basis on which, and each step in the process by which you have computed the dollar amount of punitive damages set forth in the Complaint.

OBJECTION:

The objections to interrogatories numbered 19 through 22 and 23 through 36 are incorporated herein by reference with respect to fragments (b) and (c) of Interrogatory No. 37. As to fragment (a), it is objected to on the grounds that it calls for information not readily avialable to plaintiffs. As to fragment (d), the quantum of punitive damages was arrived at by the selection of an arbitrary figure by counsel for plaintiff and was approved by plaintiffs because it was neither too high nor too low, but would serve to punish the company for the long-standing perpetuation of its discriminatory employment practices.

Respectfuly submitted,

NELSON, NELSON & LOMBARD, LTD.
A Professional Law Corporation

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

POWER DIVISION ASSOCIATION, an unincorporated employees association, CHARLES V. SCHINDLER, WILLIE WILLIAMS, ROBERT W. GOULD, OBERY COOPER, JR. and MYRNA CHAGNARD, and all other persons similarly situated,

Plaintiffs,

versus

NEW ORLEANS PUBLIC SERVICE CORPORATION, a Louisiana Corporation,

Defendant.

CIVIL ACTION

NO. 75-1635

SECTION "B"

CLASS ACTION COMPLAINT FOR DAMAGES, AND INJUNCTIVE AND DECLARATORY RELIEF

DEFENDANT'S FIRST SET OF INTERROGATORIES TO PLAINTIFFS

******

INTERROGATORY NO. 38:

With the exception of those documents heretofore identified in answer to the foregoing interrogatories, please identify with sufficient specificity to form the basis of a Rule 34 request for the production of documents, all documents in your possession, or subject to your control, or of which you have knowledge, which would reflect any of the information requested in the foregoing interrogatories and indicate on which interrogatory or part thereof the document reflects information.

******

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

POWER DIVISION ASSOCIATION, et al., — CIVIL ACTION NO. 75-1635

Plaintiffs — SECTION "B"

vs.

NEW ORLEANS PUBLIC SERVICE CORPORATION A Louisiana Corporation, — CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE AND DECLARATORY RELIEF

Defendant

PLAINTIFF'S ANSWERS TO DEFENDANT'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 (a) of the Federal Rules of Civil Procedure, Robert W. Gould (and Obery Cooper, Jr. and Willie L. Williams) supplies the following answers to defendant's first set of interrogatories. Objections to certain

interrogatories are set out separately in plaintiff's objections to defendant's first set of interrogatories, filed this day with these answers.

******

INTERROGATORY NO. 38:

At this stage, I know of no documents which are relevant. If at a later date any documents which pertain to my answers are discovered, my counsel will inform defendant. My NOPSI personnel file contains much of the data requested herein.

******

Pursuant to Rule 33(a) of the Federal Rules of Civil Procedure, Myrna T. Chagnard supplies the following answers to defendant's first set of interrogatories. Objections to certain interrogatories are set out separately in plaintiffs' objections to defendant's first set of interrogatories, filed this day with these answers.

INTERROGATORY NO. 38:

At this stage, I know of no documents which are relevant, except the one which I have attached to interrogatory 6. If at a later date any documents which pertain to may answers are discovered, my counsel will inform defendant. My NOPSI personnel file contains much of the data requested herein.

APPENDIX I

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

HENRY FAGGEN, ETC.	NO. 70-2946
Versus	CIVIL ACTION
NEW ORLEANS PUBLIC SERVICE, INC., ET AL	SECTION D

MEMORANDUM OPINION AND ORDER

Lolis E. Elie, Esq.
Debra A. Millenson, Esq.

For Plaintiff

Michael J. Molony, Jr., Esq.
Jones, Walker, Waechter, Poitevent, Carrere & Denegre

For New Orleans Public Service, Inc.

Richard A. Dowling, Esq.

For Co-operative Street Railway Employees Association

BOYLE, District Judge:

Plaintiff, Henry Faggen, brought this action pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, on behalf of himself and all others similarly situated to enjoin and redress certain violations of the Act alleged to

have been committed by the New Orleans Public Service, Inc. (N.O.P.S.I.) and the Co-operative Street Railway Employees Association. The matters at hand, heard before the Court on a prior day, arise out of the twofold motion brought by defendant N.O.P.S.I. to dismiss for failure to state a claim upon which relief may be granted and for a determination that the action is not maintainable as a class action.

With respect to the former aspect of the motion, it is mover's contention that since the named complainant, Henry Faggen, does not allege that he is aggrieved by the five counts of alleged discrimination, complainant is not aggrieved by the conditions from which he seeks relief.

However, in paragraph 7 of the complaint, it is alleged that Henry Faggen was discharged on account of his race in violation of his civil rights under §703 of the 1964 Civil Rights Act, 42 U.S.C.A. §2000e-3. This alone would seem to sufficiently state a claim. Paragraph 5 of the judicial complaint states five allegations of how N.O.P.S.I. discriminated against Negro employees. Since plaintiff, a Negro, was at one time an employee of N.O.P.S.I. he would have been aggrieved by the alleged acts of discrimination. To hold otherwise would allow an employer who has discriminated against certain employees to insulate himself from suit by discharging said employees.

The motion to dismiss for failure to state a claim must be denied. It was not alleged here that the scope of the complaint was broader than the EEOC charge. Thus, we did not have the *Sanchez v Standard Brands, Inc.*, 431F. 2d 455 (5th Cir. 1970), problem.

Mover does, however, rely on *Sanchez,* supra, for the proposition that the allegations of the judicial complaint cannot exceed the scope of the EEOC investigation triggered by the discrimination charge filed with the EEOC. Mover contends that since the EEOC investigation was limited to the defendant's conduct in its Transit Department (which fact is soundly documented) the judicial complaint, to the

extent that it alleges discriminatory practices outside of the Transit Department, exceeds the permissable scope and must, therefore, be dismissed.

However, *Sanchez* teaches that the scope of the judicial complaint is limited to the scope of the EEOC investigation which *can* reasonably be expected to grow out of the charge of discrimination, not of the investigation which was actually made. The reasoning in *Dent* v. *St. Louis-San Francisco Railway Company,* 406 F. 2d 399 (5th Cir. 1969), that the inaction of the Commission should not prejudice the rights of the charging party further supports this conclusion. The facts in *Sanchez* show that the plaintiff originally filed a charge with the EEOC alleging sex discrimination which was later amended to include an allegation of discrimination based on national origin. The EEOC investigation concerned both sex and national origin discrimination but found that reasonable cause existed only as to the latter.

The amended charge was held to relate back to the original charge and Sanchez was allowed to pursue both grounds of discrimination in the judicial complaint. But defendants further contended that the judicial complaint contained distinct allegations not found in either EEOC charge and, therefore, not properly before the Court. This contention was rejected. The Court finally concluded that:

"...it is obvious that the civil action is much more intimately related to the EEOC investigation than to the words of the charge which originally triggered the investigation. Within this statutory scheme, it is only logical to limit the permissible scope of the civil action to the scope of the EEOC investigation which *can* reasonably be expected to grow out of the charge of discrimination." 431 F. 2d 466.

Defendant herein relies on this language in support of its argument that we must limit Faggen's judicial complaint to the confines of the EEOC investigation — the Transit Department. While the argument was not urged in *Sanchez,* the *Sanchez* court did have an EEOC investigation but did

not limit the judicial complaint to that particular investigation.

While the EEOC charges and the judicial complaint specifically allege discriminatory practices in the Transit Department, there are allegations in the complaint of a general nature which accuse the defendant of maintaining a systematic policy of racial discrimination in employment practices generally. Since these general allegations of discrimination would undoubtedly apply to the Transit Department they will not be dismissed for the reason that they may also relate to other departments.

We think that the limiting of the scope of the complaint to the Transit Department would be more properly considered in a determination of the class which plaintiffs Faggen and Lavigne seek to represent. Thus we come to the second part of the defendant's motion, namely, to determine that this action is not maintainable as a class action.

Most, if not all, of defendant's arguments in this respect have been considered and rejected by the Fifth Circuit in *Johnson* v. *Georgia Highway Express, Inc.*, 417 F. 2d 1122 (5th Cir. 1969). There it was held that a claim of racial discrimination by a discharged Negro employee was typical of the claims of all Negro employees. There the complaint alleged a company-wide policy of discrimination on the basis of race.

There also the appellate court instructed the lower court to conduct an evidentiary hearing to determine the plaintiff's ability to protect the interest of the class rather than define the class too narrowly. At this juncture we cannot say whether the plaintiffs in this case satisfy the requirements of Rule 23, F.R.C.P., for maintenance of a class action on behalf of all black Transit Department employees.

It may well be that there are black employees in Transit Department, if it only is involved here, who may not share Faggen's desire to affect the seniority system and, if so, would be disadvantaged by a decree which would deprive

them of benefits acquired thereunder. Faggen then could hardly be found capable of fairly and adequately protecting those persons. If all departments of the defendant are to be affected by any decree herein, we can perceive that Faggen might not be capable of so protecting the interests of employees in other departments.

In *Oatis* v. *Crown Zellerbach Corporation*, 398 F. 2d 496 (5th Cir. 1968) the Fifth Circuit held that a class action was permissible when:

1. The requirements of Rule 23 (a) & (b) (2) are met.
2. The plaintiff has standing to raise issues growing out of the employer's conduct by which he was aggrieved.
3. The issues raised must have been raised in EEOC charge. [1]

In a recent Title VII case, *Danner* v. *Phillips Petroleum Co.*, ___F. 2d___(5th Cir. 1971), the Fifth Circuit, considering the propriety of the class action, stated:

> "Rule 23, among other things, requires that the party suing establish himself as an adequate representative of the class, and that the class be so large in number that it would be impracticable to join all members. Moreover, the class itself must be identified."

As already noted, the complaint contains general allegations of racial discrimination; however, Faggen and Lavigne are alleged to be former employees of the Transit Department. But no employee or former employee of any other department is a plaintiff in this action. See *Oatis* supra.

1-**Sanchez v. Standard Brands,** supra, provides the standard by which we are to determine the issues that have been properly raised by the EEOC charge. See n. 7, 431 F. 2d at 466.

Mindful of the fact that class actions are permissible under Title VII, *Miller* v. *International Paper Co.*, 408 F. 2d 283 (5th Cir. 1968) and *Oatis* v. *Crown Zellerbach Corp.*, supra, we must await an evidentiary hearing to determine whether a class action would be proper in this case, and, if so, to what extent will it be maintained.

The Motions to Dismiss and to Declare the action not maintainable as a class action are DENIED.

Edward J. Boyle
UNITED STATES DISTRICT JUDGE

New Orleans, Louisiana

October 18th, 1971.

APPENDIX J

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

POWER DIVISION ASSOCIATION, *et al.*,

Plaintiffs,

CIVIL ACTION NO. 75-1635

SECTION B

versus

NEW ORLEANS PUBLIC SERVICE, INC. a Louisiana Corporation,

Defendant.

SECOND INTERROGATORIES TO DEFENDANT

A. Each interrogatory is to be stated in full before the answer is given.

B. Each interrogatory is a continuing interrogatory, to be supplemented when and if plaintiffs request updated information.

C. The interrogatories are to be answered by a corporate officer of defendant corporation who has custody and control of the corporation's employment and personnel records.

D. When the word "employees" is used in these interrogatories, it is to be construed to mean those employees who were not covered by the Consent Decree in *Faggen v. New Orleans Public Service, Inc.*, Civil Action No. 70-2946, §D of this Court; i.e., those employees who are not employed in the *Transit Division* of defendant.

1. State the names and present addresses of witnesses defendant intends to use at trial to prove the allegation in paragraph IV of defendant's counterclaim that plaintiff Power Division Association is a party to and a joint participant in employment discrimination on the basis of race or sex.

2. State whether defendant or its attorneys has statements, testimony or summaries of debriefing of the witnesses named in interrogatory no. 1 and attach such documents to the answers hereto as exhibits.

3. List all documents which defendant intends to introduce into evidence at trial to prove the allegation in paragraph IV of defendant's counterclaim that plaintiff Power Division Association is a party to and a joint participant in employment discrimination on the basis of race, attaching copies of the same to the answer as exhibits, showing the provenance or source of each and the witness through whom the document will be offered or introduced into evidence.

4. State the particulars of the "special consensual relationship existing between the Power Division Association and its employee members" which makes it actively, directly and primarily responsible to its members for the discrimination alleged in the class action complaint, as alleged in paragraph V of the counter-claim.

5. State the name and present addresses of witnesses defendant intends to use at trial to prove its allegations in paragraph V of defendant's counterclaim.

6. State whether defendant or its attorneys have testimony or summaries of debriefing of the witnesses named in interrogatory no. 5 and attach such answer to the answers hereto as exhibits.

7. List all documents which defendant intends to introduce into evidence at trial to prove the allegations of paragraph V of defendant's counterclaim, attaching copies of the same to the answers hereto as exhibits, showing the provenance or source of each and the witness through whom the document will be offered or introduced into evidence.

8. Describe the general function or role of each department or division in N.O.P.S.I., and for each job within each department or division provide a job description.

9. List any jobs or positions within N.O.P.S.I., including supervisory positions, not included in the answers to

interrogatory no. 8 *supra*, and for each job so listed, state the wage rate and provide a job description.

10. State by division or department for each job listed in the answer to interrogatories nos. 8 and 9.

(a) the names, race and sex of all employees presently holding each job;

(b) the seniority date of each employee (if employed more than once, date of last continuous employment);

(c) the level of education completed by each employee;

(d) the previous related work-experience of each employee; and

(e) the present wage-rate earned by each employee.

11. State the name, race and sex of each person who has applied for a job with N.O.P.S.I. since January 1, 1970, and in addition state the applicant's address, previous related work experience, previous job-related training, educational background and job applied for.

12. For each person listed in interrogatory no. 11 whose application for employment was rejected, state in detail the reasons for such rejection.

13. For each person listed in interrogatory no. 11 whose application for employment was accepted, state:

(a) the initial job assignment;

(b) the initial rate of pay;

(c) date of hiring;

(d) all promotions, advancements, and transfers indicating each job to which the individual promoted, advanced or transferred in chronological order, the date of each promotion, advancement or transfer, and the rate of pay for each promotion, advancement or transfer;

(e) current job and rate of pay for each such employee still employed by N.O.P.S.I.;

(f) amount of pension credit accrued;

(g) all disciplinary actions or warnings;

(h) supervisory ratings or evaluations.

14, Describe the system or method used in making promotions or transfers from among employees within N.O.P.S.I., specifying whether reference is made to length of service and whether job vacancies are posted.

15. If job vacancies are posted, state the location or locations of such posting, the duration of such posting, and the procedure or method of bidding for such vacancies.

16. If not included in the answers to interrogatories nos. 14 and 15, state and describe any other procedures whereby temporary and permanent job vacancies are filled.

17. State whether there are educational requirements for hire, promotion or transfer, and if so, give the educational requirement necessary in each instance where required.

18. State whether N.O.P.S.I. is covered by the provisions of the Fair Labor Standards Act.

19. For each department or division of N.O.P.S.I., list, by each and every job classification, all tests, evaluations or other criteria used since January 1, 1960 as factors to determine suitability for employment promotion or transfer with N.O.P.S.I. Please attach copies of each written test in the answers hereto.

20. For each written test given since January 1, 1960 as a condition of employment or advancement with N.O.P.S.I., state:

a) the name of the test and the period of its initial use to the date these interrogatories are answered;
b) the agencies, persons or companies who prepared such tests;
c) the parties or agencies who made the decision to utilize or cease administering each and every written test.

21. State for each and every written test administered by N.O.P.S.I. since January 1, 1960, whether defendant has attempted to validate such test in accordance with Federal Guidelines on Employment Testing Procedures (29 C.F.R. 1907). If the answer is in the affirmtive, describe for each and every written test every step and procedure followed in

the test validation process.

22. State for each and every written test administered by N.O.P.S.I. since January 1, 1960 the number of persons, by race and sex, who

a) succeeded in achieving the minimum passing score;
b) did not achieve the minimum passing score.

23. State whether N.O.P.S.I. has developed or administered (or both) a training program for the purpose of qualifying employees for promotion. If so, please state:

a) each division or department in which the training program is available;
b) a complete description of the training program;
c) when the program was instituted;
d) the qualifications necessary to participate in the program;
e) the name, race, sex and present job position of each participant in the program since its inception.

24. State whether a pension plan is avialable to N.O.P.S.I. employees. If so, state:

a) how the plan operates, including but not limited to, who is eligible to participate and the schedule of contributions according to pay scale;
b) a list of all retired persons presently receiving a pension payment, giving the following information for each such person:
   1) name, age, race and sex;
   2) number of years of service with N.O.P.S.I.;
   3) amount of pension paid per month;
   4) the job or position held and the rate of pay at the time of retirement.

Respectfully submitted,

DONALD JUNEAU
344 Camp Street, Suite 1212
New Orleans, Louisiana 70130
Telephone: 581-2688

NELSON, NELSON & LOMBARD
PATRICIA SAIK
344 Camp Street, Suite 1100
New Orleans, Louisiana 70130
Telephone: 523-5893

Dated: October 31, 1975 By:_____
Donald Juneau

PROOF OF SERVICE

The undersigned certifies that copies of the above and foregoing second interrogatories to defendant have been mailed to Michael J. Molony Jr., and Joseph E. LeBlanc, Jr., attorneys for defendant, 1100 Whitney Building, New Orleans, Louisiana 70130, this thirty-first day of October 1975.

Donald Juneau

APPENDIX K

THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

28 U.S.C.A. § 1291. FINAL DECISIONS OF DISTRICT COURTS

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District

Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. As amended Oct. 31, 1951, c. 655, §48, 65 Stat. 726; July 7, 1958, Pub. L. 85-508, § 12(e), 72 Stat. 348.

28 U.S.C.A. § 2072. RULES OF CIVIL PROCEDURE

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure of the district courts and courts of appeals of the United States in civil actions, including admiralty and maritime cases, and appeals therein, and the practice and procedure in proceedings for the review by the courts of appeals of decisions of the Tax Court of the United States and for the judicial review or enforcement of orders of administrative agencies, boards, commissions, and officers.

Such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as at common law and as declared by the Seventh Amendment to the Constitution.

Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May, and until the expiration of ninety days after they have been thus reported.

All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect. Nothing in this title, anything therein to the contrary notwithstanding, shall in any way limit, supersede, or repeal any such rules heretofore prescribed by the Supreme Court.

As amended May 24, 1949, c. 139, § 103, 63 Stat. 104; July 18, 1949, c. 343, § 2, 63 Stat. 446; May 10, 1950, c. 174, § 2, 64 Stat. 158; July 7, 1958, Pub. L. 85-508, § 12(m), 72 Stat. 348; Nov. 6, 1966, Pub. L. 89-773, § 1, 80 Stat. 1323.

RULE 23, FEDERAL RULES OF CIVIL PROCEDURE

CLASS ACTIONS

(a) *Prerequisites to a Class Action.* One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) *Class Actions Maintainable.* An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other avialable methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of

members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

[c] *Determination by Order Whether Class Action to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.*

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b) (3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judment in an action maintained as a class action under subdivision (b) (1) or (b) (2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b) (3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c) (2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

[d] *Orders in Conduct of Actions.* In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

[e] *Dismissal or Compromise.* A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

As amended Feb. 28, 1966, eff. July 1, 1966.